DEVON ENERGY CORP.

IBLA 86-1152 Decided August 31, a988

Appeal from a decision of the District Manager, Rock Springs District Office, Bureau of Land Management, dismissing a protest of a revision of a participating area under an oil and gas unit agreement.

Affirmed.

1. Notice: Generally--Rules of Practice: Appeals: Timely Filing--Rules of Practice: Protests

The Bureau of Land Management properly dismissed a protest which challenged a completed action and was filed nearly 3 years after the party filing the protest received notice of the action.

APPEARANCES: Craig Newman, Esq., Casper, Wyoming, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Devon Energy Corporation (Devon) has appealed from a decision dated March 28, 1986, issued by the District Manager, Rock Springs District Office, Bureau of Land Management (BLM), which dismissed a protest of the First Revision of Frontier Formation Participating Area "B" under the unit agreement for the Shute Creek Unit, Lincoln County, Wyoming.

The unit agreement became effective on July 18, 1974. By letter of July 22, 1982, Amoco Production Company (Amoco), the unit operator, applied for approval of several revisions to participating areas under the agreement. The proposed First Revision to Participating Area "B" enlarged the area from 840.08 acres to 1,480.08 acres and was based upon the completion of unit well No. 9. Amoco's letter of application shows that copies of the letter were sent to some unit owners, not including Devon. On December 7, 1982, BLM approved the revision to Participating Area "B," effective July 1, 1981.

By letter dated March 6, 1986, Devon protested the revision, alleging that its interest in the unit had been diluted thereby. BLM dismissed the protest on March 28, 1986, stating that the period to protest the revision had elapsed.

In its statement of reasons, Devon states that it is a party to the unit agreement, having ratified it by a subsequent joinder dated March 21, 1980, and was therefore entitled to, but did not receive, notice from Amoco concerning Amoco's application for revision of the participating area. 1/ Devon concedes that it received notice of the revision in a March 23, 1983, letter from Amoco, which enclosed a copy of the BLM approval letter (Affidavit of Catherine Greway, appended to Devon's statement of reasons). Although Devon states that it would have protested the revision in 1982 had it received notice from Amoco prior to the approval, it does not explain why it waited nearly 3 years after it did receive notice to file the protest at issue here.

[1] Regulation 43 CFR 4.450.2, concerning protests, provides:

> Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

A protest properly is an objection to a proposed action rather than an action which has been completed. Everett J. Johnson, 95 IBLA 136 (1987). We have held, however, that where a party did not receive the notice of a proposed action to which it was entitled, an objection filed by the party subsequent to the action, even though termed a "protest," should be treated as some other form of objection, such as an appeal. Peter Paul Groth, 99 IBLA 104, 108-110 (1987). An appeal of BLM's approval letter clearly could have been taken. See 43 CFR 3185.1.

An appeal is required to be filed within 30 days of the date the appellant is served with the decision being appealed. 43 CFR 4.411(a). BLM's December 7, 1982, approval letter required Amoco to advise all interested parties of the revision. Amoco notified Devon by letter of March 23, 1983. Amoco's letter to Devon, whether or not it qualified as service under 43 CFR 4.411(a), constituted actual notice to Devon. We have held that where a party has actual notice of a BLM decision, the party's time for appeal runs from the date of actual notice. Sharon Long, 83 IBLA 304 (1984); Nabesna Native Corp. (On Reconsideration), 83 IBLA 82 (1984).

Devon's objection to BLM's approval of the revision, filed almost 3 years after Devon received notice of the approval, is clearly untimely and was therefore properly dismissed by BLM.

1/ No copy of the unit agreement is included in the record.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anita Vogt
Administrative Judge
Alternate Member

I concur:

John H. Kelly
Administrative Judge